

**Interpretation of the Director  
Under Seattle Municipal Code Title 23**

**Regarding the Use of the**

**Property at**

**922 McGilvra Blvd. East**

**DPD Interpretation No. 12-006  
(DPD Project No. 3014269)**

**Background**

This interpretation was requested by attorney G. Richard Hill, representing the Seattle Tennis Club located at 922 McGilvra Boulevard East, adjacent to Lake Washington. The Seattle Tennis Club (STC) is an existing private club in a Single Family zone (SF 9600). As a private club in a Single Family zone, it is regulated as a nonconforming use, as private clubs are not permitted in the Single Family zones. The property is also located within an Urban Residential (UR) Shoreline Environment, in which private clubs are also prohibited. STC proposes to add coverings to two existing outdoor tennis courts. In a memorandum to the Department of Planning and Development (hereafter referred to as DPD) dated January 26, 2012, Mr. Hill refers to the proposed covers as “seasonal weather protection” and further says, on page 2 of the memorandum:

“The seasonal weather protection will be provided by a ‘tennis bubble,’ which is a removable, fabric dome supported by air pressure generated by blowers inside the dome. The tennis bubble will be placed over the courts at the beginning of the rainy season, and removed at its end.”

The regulations for nonconforming uses allow legally established nonconforming uses to continue but prohibit the expansion or extension of the nonconforming use. The question for interpretation is whether the erection of the proposed tennis bubble domes over existing outdoor tennis courts may be permitted according to the standards for nonconforming uses in the SF 9600 zone and UR Environment.

### **Findings of Fact**

1. The Seattle Tennis Club (“STC”) property is located at 922 McGilvra Boulevard East, in the Madison Park neighborhood. The site is zoned SF 9600 (Single Family Residential with a minimum lot area of 9,600 square feet), and is also located with the UR (Urban Residential) Shoreline Environment.
2. The STC is, by definition, a private club. Private clubs are prohibited in both the Single Family 9600 zone and the UR Environment, per Seattle Municipal Code (SMC) Sections 23.44.022.A and 23.60.544.G, respectively.
3. Existing uses that are prohibited under the current Land Use Code are regulated as nonconforming uses, subject to the provisions of Sections 23.42.100 et seq. Uses nonconforming to the use standards for the Shoreline District are further regulated by Section 23.60.122.
4. The general Land Use Code regulations for nonconforming uses and nonconformity to development standards are set forth in Chapter 23.42, General Use Provisions. Regarding applicability and intent, Section 23.42.100 says:
  - “A. The nonconformity provisions of this chapter apply to uses and sites in all zones, except for the shoreline overlay district (see Chapter 23.60).
  - B. It is the intent of these provisions to establish a framework for dealing with nonconformity that allows most nonconformities to continue. The Code facilitates the maintenance and enhancement of nonconforming uses and developments so they may exist as an asset to their neighborhoods. The redevelopment of nonconformities to be more conforming to current code standards is a long-term goal.”
5. Generally, nonconforming uses are prohibited from expanding except as otherwise required by law or as necessary to improve access for the elderly or disabled, per Section 23.42.106.D. This section states, in part:
  - “A nonconforming nonresidential use shall not be expanded or extended, except as follows:
    1. A structure occupied by a nonconforming nonresidential use may be maintained, repaired, renovated or structurally altered but shall not be expanded or extended except as otherwise required by law, as necessary to improve access for the elderly or disabled or as specifically permitted elsewhere in this Code.”
6. Nonconforming uses within the Shoreline Overlay District are regulated by SMC 23.60.122.B, as follows:
  - “B. A structure or *development* containing a nonconforming use or uses may be maintained, repaired, renovated or structurally altered *but shall not be expanded or extended beyond its existing external dimensions* except as provided in subsection E

below, as otherwise required by law, as necessary to improve access for the elderly and disabled, or to provide regulated public access.” [Emphasis added.]<sup>1</sup>

7. The Code does not define the terms “expansion,” or “extension.” Several examples of usage of the term “expansion” are provided below. Because these examples have been taken from throughout the Code, they may or may not be directly applicable to the subject site. However, they are provided here to shed light on the meaning of the term “expansion” as it is used in the Land Use Code.

In the standards for expansion of nonconforming residential uses found at SMC 23.42.106.B.3 and B.4, the Code addresses expansions that are no more than 500 square feet of gross floor area. Again at SMC 23.42.106.D.2, regarding certain nonconforming manufacturing uses in the Seattle Mixed zone, expansions are regulated on the basis of a percentage of existing gross floor area.

Regarding general provisions for conditional uses in single family zones, found at SMC 23.44.018, subsection F provides as follows:

*“F. Minor structural work that does not increase usable floor area or seating capacity and that does not exceed the development standards applicable to the use shall not be considered an expansion, unless the work would exceed the height limit of the zone for uses permitted outright. Such work includes but is not limited to roof repair or replacement and construction of uncovered decks and porches, facilities for barrier free access, bay windows, dormers, and eaves.”* [Emphasis added.]

Regarding expansion of institutions in multifamily zones, found at Section 23.45.570, the Code states, in part:

*“C. If the expansion of an existing institution meets all development standards of Sections 23.45.092 it shall be permitted outright. Expansions not meeting development standards may be permitted as administrative conditional uses subject to the requirements of Section 23.45.122. Structural work that does not increase usable floor area or seating capacity and does not exceed the height limit is not considered expansion. Such work includes but is not limited to roof repair or replacement, and construction of uncovered decks and porches, bay windows, dormers, and eaves. The establishment of a child care center in a legally established institution devoted to the care or instruction of children which does not require expansion of the existing structure or violate any condition of approval of the existing institutional use is not considered an expansion of the use.”* [Emphasis added.]

Regarding expansion of uses in Public Facilities in single family zones, Section 23.45.106 states (in part):

*“D. Expansion of Uses in Public Facilities.*

---

<sup>1</sup> Section 23.60.122.E regulates reconfiguration of nonconforming moorages and is not relevant to this interpretation.

1. Major Expansion. Major expansions may be permitted to uses in public facilities allowed in subsections 23.51A.002.A and B above according to the same provisions and procedural requirements as described in these subsections. A major expansion of a public facility use occurs when the proposed expansion would not meet development standards or *would exceed either 750 square feet or 10 percent of its existing area, whichever is greater, including gross floor area and areas devoted to active outdoor uses other than parking.* [Emphasis added.]
8. The Seattle Comprehensive Plan provides, in Land Use Policy LU13 as follows:

“Seek the redevelopment of legally established structures and uses that do not conform to current regulations so that they are more conforming to current standards over the long term. Encourage nonconformities to become more conforming to current standards. Allow nonconformities to continue and support the maintenance and enhancement of nonconforming uses and developments so they may exist as an asset to their neighborhoods and so the City’s land use regulations do not impose excessive burdens on legally established private property, *as long as they do not expand their nonconformity.*” [Emphasis added.]
9. The Code defines the term “structure” in Section 23.84A.036 as follows:

“‘Structure’ means anything constructed or erected on the ground or any improvement built up or composed of parts joined together in some definite manner and affixed to the ground, including fences, walls and signs, but not including poles, flowerbed frames and such minor incidental improvements.”

The Shoreline regulations also contain definitions of terms, and Section 23.60.936 contains a definition of “structure” as follows:

“‘Structure’ means a permanent or *temporary* edifice or building, or *any piece of work artificially built or composed of parts artificially joined together in some definite manner*, whether installed on, above, or below the surface of the ground or water, including fences, walls, signs, piers, floats and drydocks, but not including poles, flower-bed frames and other minor incidental improvements, or vessels.” [Emphasis added.]
10. There is no definition of “development” in the general definitions of the Land Use Code at Chapter 23.84A. The Shoreline Code contains a definition at Section 23.60.908 as follows:

“‘Development’ means a *use consisting of the construction or exterior alteration of structures*; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this title at any water level.”

11. The Code defines the term “gross floor area” in Section 23.84A.014 as follows:

“‘Gross floor area’ means the number of square feet of total floor area bounded by the inside surface of the exterior wall of the structure as measured at the floor line.”

The Shoreline Code does not provide a separate definition of floor area or gross floor area in Chapter 23.60.

12. Interpretation No. 01-004, In the Matter of the Use of the Property at 922 McGilvra Boulevard East (2002) found that a proposal to add floor area within the existing shell of the Seattle Tennis Club main clubhouse building was an expansion of a structure containing a nonconforming use, but further concluded that the Shoreline Code standard in Section 23.60.122.B regulating structures or development containing a nonconforming use would allow the increase to building floor area, as “the proposed expansion . . . would not extend beyond the existing external dimensions of an existing building . . . .”

13. The STC occupies a site approximately 8 acres in area and is developed with a club house, swimming pool, parking and indoor tennis court structure, several accessory structures, and 13 outdoor tennis courts.<sup>2</sup> Over half the property, including most of the area occupied by the outdoor tennis courts, is within the 200-foot Shoreline Overlay District, according to the approved plans.

14. The STC has proposed to cover two of the outdoor tennis courts with a covering that their attorney, Mr. Hill, describes in a memorandum to DPD dated January 26, 2012, as a “tennis bubble.” According to a promotional document from the manufacturer, Arizon Structures, which was supplied by STC or their representatives, the “tennis bubble” is described as an “air supported structure.” This document indicates that these air, frame, and tension building structures are “engineered to meet local and international building codes.” They serve a wide variety of uses, but among the uses are “seasonal tennis structures.” While Arizon Structures products appear to be supported by air pressure, according to the corporate literature, the photos in the literature also clearly show that these devices are anchored to the ground by cables. On page 2 of the promotional document, the “cable grid system is described as follows:

“The Arizon Cable Grid System controls structural movement in high winds, manages stress on the fabric envelope, increases safety, and extends the life and usability of the structure. The grid is comprised of a custom, vinyl-coated and galvanized aircraft cable.”

The Arizon Company refers to their products as “buildings” or “structures” throughout their promotional materials. The materials also state that the “. . . unique structural design allows Arizon Air Structures to withstand up to 150 mph winds and snow loads of 50 pounds

---

<sup>2</sup> See approved plans for Seattle Building Permit 697697, issued March 19, 1998.

per square foot. According to photos and diagrams in the materials, the grid structure is anchored to a base that encloses the structure from the ground upward.

15. Under the Seattle Building Code, a frame, air and tension “building” such as the proposed tennis bubbles is regulated as a structure, and a building permit is required to erect one. See Seattle Building Code (SBC) Section 101.2.

### **Conclusions**

1. The STC property is located within both the Single Family 9600 zone and the Urban Residential Shoreline Environment. As such, it is subject to the regulations of the underlying SF 9600 zone and the UR Shoreline Environment. The nonconforming private club use is prohibited from expanding or extending under the regulations for both the underlying zone and the Shoreline Environment.
2. With respect to the regulations for the underlying SF 9600 zone, it is clear that the term expansion as used throughout the Code is frequently described in terms of an increase in floor area. From this usage throughout the Code, the Department has concluded that added floor area constitutes an expansion of a use for purposes of the Land Use Code, and has consistently applied the Code in this manner. See Interpretation No. 01-004, cited in Finding of Fact No. 12.
3. Section 23.42.100 has been read, in the past, to state that the general standards for nonconformities do not apply to uses or developments that are nonconforming to the standards in the Shoreline Code. The nonconformity standards of the Shoreline Code apply, instead. In this case, both the standards for the underlying zoning in Section 23.42.106.D and the Shoreline standards in Section 23.60.122.B clearly prohibit the proposed tennis bubbles as an expansion or extension of a structure or development containing a nonconforming use. Under either set of standards, the proposed tennis bubbles add floor area not within an existing structure, and this addition is regarded as an expansion or extension of the nonconforming use.
4. Section 23.42.106.D.1 says, in part: “A structure occupied by a nonconforming nonresidential use may be maintained, repaired, renovated or structurally *altered but shall not be expanded or extended . . .*” Section 23.60.122.B further provides: “A structure or development containing a nonconforming use or uses may be maintained, repaired, renovated or structurally altered *but shall not be expanded or extended beyond its existing external dimensions . . .*” The addition of the tennis bubbles, unlike addition of floor area within the existing building envelope of the main clubhouse discussed in Interpretation No. 01-004, would add a new structure to the STC property. The addition of new structures constitutes expansion or extension of structures containing a nonconforming non-residential use and is an expansion of the nonconforming use beyond the existing external dimensions of any other structure on the site.

5. The addition of structures to a site containing a nonconforming use converts existing open space devoted to a non-structural outdoor sports activity into an area useable year round for indoor sports use. Construction of the tennis bubbles would *expand* the coverage of structures on site by adding gross floor area as defined in the Land Use Code (Finding of Fact No. 11) to the STC property. The tennis bubbles clearly include exterior walls and the area bounded by the interior surface of those walls is floor area. Such expansion is either prohibited or restricted by existing Code sections regulating nonconformity or expansion of conditional uses (see Finding of Fact No. 7). Construction would also *extend* the nonconforming use by making outdoor tennis courts easier to use in the winter months. The use of the bubbles also fundamentally changes the character of the outdoor tennis courts by converting them to an indoor use, and in this way also extends the nonconforming use by adding additional indoor activity space. Section 23.60.122.B addresses both expansion of a structure and expansion of a development containing a nonconforming use. While no existing structure is expanded, the addition of a new structure or structure expands the “development” on the property, defined in part in Section 23.60.908 as “a *use consisting of the construction or exterior alteration of structures.*” This definition is broad enough to include both expansion of existing structures and construction of new ones.
6. The literature supplied by STC in support of their argument that the tennis bubbles are not structures or developments in fact demonstrates the contrary. (Finding of Fact No. 16.) The Arizon Structures literature refers to their products throughout the documents as buildings or structures. A building permit is required from DPD to set them up. Photos in the Arizon literature show that the cable grid system used to secure the tennis bubbles covers the entire exterior of the bubbles in a grid pattern and is then anchored to the ground in multiple locations all around the “fabric envelope” that forms the bubble dome. The Land Use Code definition of “structure” at 23.84A.036 says that a structure is “anything constructed or erected on the ground or any improvement built up or composed of parts joined together in some definite manner and affixed to the ground.” The Shoreline definition of “structure” is similar. It says in part that a structure is “a permanent or *temporary edifice or building, or any piece of work artificially built or composed of parts artificially joined together in some definite manner*, whether installed on, above, or below the surface of the ground or water.” (Finding of Fact No. 12.). The proposed “frame, air and tension” building is clearly a structure under either definition. It is affixed to the ground and is also at least a temporary edifice or piece of work that is installed on the ground. It is more than a tent or similar portable shelter, especially since the Arizon literature states that their structures are designed to meet building codes.
7. A determination that the tennis bubbles would expand or extend the nonconforming use of the property as a private club is most consistent with the intent of both the Land Use Code and the Seattle Comprehensive Plan. Section 23.42.100.B specifically says that redevelopment of nonconformities to be more conforming to current code standards is a long term goal (Finding of Fact No. 4), while Land Use Policy LU13 in the Comprehensive Plan is to seek redevelopment of structures and uses that do not conform to current regulations and encourage nonconformities to become more conforming to current standards. LU13 also states that nonconformities may be continued, maintained and even enhanced, so long as they do not expand their nonconformity (Finding of Fact No. 11). The

proposed tennis bubbles are contrary to the clear intent of these policy statements in the code and the comprehensive plan, as they cause the existing private club to move even farther towards nonconformity with additional interior space and extended use in the winter months.

#### **DECISION**

The proposal to construct frame, air and tension buildings (tennis bubbles) over two existing outdoor tennis courts on the Seattle Tennis Club property is regarded as an expansion of the STC facility and an extension of that facility by increasing the potential for use in periods of the year when outdoor activities would be more limited. The proposal is therefore disallowed by both the Code standards for the underlying zoning and the standards for the Shoreline Overlay District. The expansion goes beyond the existing external dimensions of the existing buildings on site and is therefore distinguished from prior interpretations that have allowed interior additions.

Entered this 17th day of October, 2013.

\_\_\_\_\_  
(signature on file)

William K. Mills, Senior Land Use Planner  
Department of Planning and Development

WKM/12-006